

90-41



UNITED STATES DEPARTMENT OF EDUCATION

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SUMMARY: Description of Statutory Changes Made by Public Law 101-508, Public Law 101-517, Public Law 101-542, and Public Law 101-647.

Dear Colleague:

Four recently enacted statutes made several changes that affect the student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended (the Act). Public Law 101-508 (the Omnibus Budget Reconciliation Act of 1990), which includes the Student Loan Default Prevention Initiative Act of 1990, and Public Law 101-517 (the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1991) were signed by the President on November 5, 1990, and Public Law 101-542 (the Student Right to Know and Campus Security Act) was signed on November 3, 1990. Public Law 101-647 (the Crime Control Act of 1990), which includes the Federal Debt Collection Procedures Act of 1990, was signed by the President on November 29, 1990.

Enclosed with this letter is a summary of the major changes made by these laws. The sections of the Act that are affected by these changes and the effective date of each change are also indicated in the enclosure.

This letter is intended to address aspects of these statutes on which the public requires immediate guidance. As with each new piece of student financial assistance legislation, we expect that questions will arise concerning various provisions of these amendments during the course of their implementation. We will contact you via future "Dear Colleague" letters to provide additional guidance on these statutes.

If you have further questions, please contact the Regional Office or the guarantee agency serving your State.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ernest C. Canellos".

Ernest C. Canellos
Acting Deputy Assistant Secretary
for Student Financial Assistance

Enclosure

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best copy available

Changes Resulting From Pub. L. 101-508, Pub. L. 101-517,
Pub. L. 101-542, and Pub. L. 101-647.

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Changes Resulting From Pub. L. 101-508, Pub. L. 101-517,
Pub. L. 101-542, and Pub. L. 101-647.

I. Changes Resulting From Pub. L. 101-508

A. General Provisions:

Ability-to-Benefit - §484(d) of the Act.

Pub. L. 101-508 of 1990 requires that, in order for a student who is admitted on the basis of ability to benefit from the education or training offered to be eligible for any Title IV student assistance, the student shall, prior to enrollment, pass an independently administered examination approved by the Secretary. This language applies to any student assistance to cover the costs of instruction for periods of enrollment beginning on or after January 1, 1991. To participate in the Title IV student assistance programs, an institution may admit as regular students only persons who have a high school diploma or GED or who have the ability to benefit from the education or training offered. Thus, to remain an eligible institution for periods of enrollment beginning on or after January 1, 1991, an institution that admits regular students on the basis of their ability-to-benefit may do so only if such students have passed an independently administered examination approved by the Secretary.

In addition, while Pub.L. 101-508 requires that the Secretary approve the student examination, the test shall be developed, administered, and graded by one or more organizations determined by the Secretary to be independent of the institutions using the test. This requirement is effective for award year 1991-92, which begins July 1, 1991. On December 19, 1990 the Department published a Notice in the Federal Register which provides additional guidance.

B. Provisions affecting the Guaranteed Student Loan (GSL) Programs:

1. Refusal to Provide Statement to Lender - §428(a)(2)(F) of the Act.

Under prior law, an institution could not refuse to certify a Guaranteed Student Loan programs loan application except in instances that would result in certifying a loan in excess of the applicable annual Stafford loan amount. Pub. L. 101-508 amends §428(a)(2)(F) of the Act to permit an institution either to refuse to provide the certification statements required by the Act or to reduce the determination of need for the loan if the institution determines, on a case-by-case basis, that the student's expenses to be covered by the loan, i.e., the estimated cost of attendance, can be met more appropriately by the institution or directly by the student from other sources.

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Pub. L. 101-542, and Pub. L. 101-647.

We view this amendment as being consistent with the authority already provided to financial aid administrators under §479A of the Act. In making the choice permitted by the new law, the aid administrator should use procedures consistent with §479A of the Act which requires that determinations be made on a case-by-case basis and that documentation supporting the determination be retained in the student's file. Please note that the law does not authorize the institution to refuse to certify a Stafford Loan application based on the institution's perception of the student's unwillingness to repay the intended loan or on the identity of the lender.

This provision became effective on November 5, 1990.

2. Preclaims and Supplemental Preclaims Assistance - §§428(c)(6)(C) and 428(l) of the Act.

Each guarantee agency that has a Reinsurance Agreement is now required, upon request of a lender, to provide preclaims assistance on accounts that are less than 120-days delinquent and supplemental preclaims assistance (SPA) on accounts that are delinquent at least 120-days. The preclaims assistance performed must generally be comparable in intensiveness to the level of preclaims assistance performed by each guarantee agency as of October 15, 1990.

In order to permit those agencies that do not currently offer SPA sufficient time to implement this requirement, both preclaims and SPA must be performed for accounts for which the first day of delinquency occurs on or after November 5, 1990. Those guarantee agencies are encouraged to provide as soon as possible SPA on other accounts, *i.e.*, those for which the first day of delinquency occurred before November 5, 1990. Agencies that currently offer SPA must continue to do so on accounts that are delinquent at least 120-days for which preclaims assistance has been performed.

The legislation also changes the way in which guarantee agencies are reimbursed for the SPA costs. Under prior law guarantee agencies received payment for SPA expenses as part of the reinsurance payments paid by the Department on defaulted loans. The Department will now make SPA payments to guarantee agencies of \$50 on each account on which SPA is performed and for which a default claim is not presented to the guarantee agency on or before the 150th day after the 120th day of delinquency. This new provision applies to all loans for which the first day of delinquency occurs on or after November 5, 1990. SPA costs on accounts for which the first day of delinquency occurred prior to November 5, 1990, and on which the agency pays the lender a default claim will continue to be reported on Part A of the Guarantee Agency Monthly Claims and Collections Report (ED Form 1189). Those

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costs will be reimbursed to the extent provided by §428(c)(6)(C)(iv), i.e., the amount which is the least of the actual SPA costs incurred, two percent of the outstanding balance of the claim, or \$100.

We are currently developing the forms, instructions and computer systems that will be required to effect the new SPA payments. We will provide additional guidance in a future Dear Colleague letter.

3. Restricted Eligibility for Students at High Default Institutions - §428A(a)(2) of the Act.

The Act prohibits an undergraduate student from borrowing under the SLS program if that student is enrolled at an institution that has a cohort default rate of 30 percent or more. Pursuant to §2003(a)(3)(A) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), this provision applied to all SLS loans certified on or after January 1, 1990 and first disbursed before October 1, 1991. Section 2003(a)(3)(A) has been amended to specify that this requirement remains in effect until October 1, 1996.

4. Minimum Period for Annual SLS Loan Amounts - §428A(b)(1) of the Act.

Under prior law the SLS annual loan limits applied to the longer of the academic year or a period of at least nine consecutive months. Section 428A(b)(1) of the Act has been amended to specify that the SLS annual loan limits, including the reduced loan limits for students in programs of study of less than a full academic year in length, now apply to a period which is the greater of the length of the institution's academic year (consistent with the definition of "academic year" found in 34 CFR 668.2) or seven consecutive months. This change became effective November 5, 1990. The new minimum period requirement applies to new SLS loans certified on or after that date. Please note that no change has been made to the determination of the maximum SLS for which a student is eligible, including the reduced SLS loan amounts applicable to students who have not successfully completed the first year of a program of undergraduate education and who are enrolled in programs that are less than one academic year in length. See §428A(b)(1)(A) - (C).

In addition, students who currently have loans that were previously subject to the nine-month minimum period requirement may regain eligibility for new SLS annual loan maximums once the new minimum period, i.e., the greater of the length of the institution's academic year or seven consecutive months, has expired. Thus, the minimum nine-month period would no longer apply to these students.

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Pub. L. 101-542, and Pub. L. 101-647.

The guidance provided in section II.F. of Dear Colleague letter GEN-90-33 regarding the determination of the beginning date of the minimum period and the certification of SLS loan applications still applies to the new minimum period requirement.

Pursuant to §2003(b)(2) of Pub. L. 101-239, the "minimum period" and reduced annual SLS loan limits requirements of §428A(b)(1) of the Act applied to all SLS loans certified on or after January 1, 1990 and first disbursed before October 1, 1991. Section 2003(b)(2) has now been amended to specify that these provisions remain in effect until October 1, 1996.

5. Disbursement and Endorsement Requirements for Stafford and SLS Loans - §428G(b)(1) of the Act.

The Act now provides that an institution may not deliver the first installment of a Stafford or SLS loan to any student who is entering the first year of a program of undergraduate education at an institution and who has not previously received a Stafford or SLS loan until 30 days after the first day of the student's program of study. This provision applies to a student who previously has been enrolled in another program but who has not completed the equivalent of the first year of the undergraduate program in which the student currently is enrolled. Under prior statute, the institution could deliver the first installment of an SLS loan to a student who had not completed the first year of an undergraduate program only if it certified that the student continued to be enrolled, in attendance and making satisfactory progress. The certification requirement has been deleted from §428G(b)(1) of the Act. Institutions are reminded that they are still required to determine that a student has maintained eligibility for the loan, pursuant to 34 CFR 682.201, prior to delivering loan proceeds to the student.

These amendments apply to the first disbursement of all covered Stafford and SLS loans for periods of enrollment beginning on or after January 1, 1991. Institutions must provide the lender with a disbursement schedule, as required by §428G of the Act, that will ensure that the first disbursement of the Stafford or SLS loan will be received by the institution just prior to the 30th day of the student's enrollment in his or her program of study.

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Pub. L. 101-542, and Pub. L. 101-647.

6. Ineligibility of High Default Institutions - §435(a) of the Act.

The new legislation prohibits an institution from participating in the GSL programs if the Secretary determines that the institution's cohort default rate calculated for each of the three most recent fiscal years is equal to or exceeds 35 percent. In fiscal year 1993 and beyond, a rate that is equal to or exceeds 30 percent for each of the three most recent fiscal years will be used.

In FY 1991, actions by the Secretary will be based on the FY 1987, FY 1988, and FY 1989 cohort default rates. Institutions which are ineligible under this provision will be notified of that determination when they are notified by the Department of their FY 1989 cohort default rate. This notification will occur prior to July 1, 1991, the effective date of this provision. The loss of eligibility to participate in the GSL programs applies to the fiscal year in which the determination is made and the two fiscal years immediately following.

Institutions that are notified of the loss of eligibility may appeal such action based on a demonstration that the calculation is not accurate or on the basis that there are in the judgment of the Secretary exceptional mitigating circumstances. The Secretary intends to publish regulations in the near future to define such exceptional mitigating circumstances.

Institutions should note that the new statutory provisions do not affect the Secretary's authority under the June 5, 1989 default reduction initiative regulations to take actions to terminate an institution's participation in all Title IV student assistance programs when an institution has a cohort default rate of greater than 60 percent.

7. Amendments to the Bankruptcy Laws.

Section 3007 of Pub. L. 101-508 makes two changes to the Bankruptcy Code that affect the Title IV student assistance programs. First, the new law exempts certain actions against institutions from application of the automatic stay of proceedings in bankruptcy. In particular, the new law exempts the following actions from the automatic stay: actions by an accrediting agency regarding the accreditation status of an educational institution in bankruptcy, actions by a State licensing body regarding the licensure of the debtor as an educational institution, and actions by a guarantee agency or the Department regarding the eligibility of the debtor to participate in the Title IV programs.

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This change should help ensure that institutions that no longer meet accreditation, licensure, or eligibility standards, or that have violated program requirements so as to warrant limitation, termination, or disqualification from participation in one or more of the Title IV programs, will not be able to thwart actions to address those defects by invoking the protection of bankruptcy law. Because of the close connection among licensure, accreditation, and eligibility to participate in the Title IV programs, the Department suggests that any party that plans to take action regarding the licensure, accreditation or eligibility of an institution in bankruptcy notify the Department prior to taking that action, so that any court challenge to that action or the ensuing loss of Title IV funds will be handled, to the extent possible, by the regulating parties in a consistent and mutually supportive manner.

Prior law had made student loans made or guaranteed under Title IV nondischargeable if the borrower filed for relief under Chapter 7 (liquidation) of the Bankruptcy Code, but not, generally, under Chapter 13 (adjustment of debts of an individual). Now that same provision applies in both Chapter 7 and Chapter 13: a Title IV loan is, generally, nondischargeable in a bankruptcy case filed under either Chapter 7 or Chapter 13 within five years after the loan first came due, exclusive of periods during which repayment obligations are suspended, *e.g.*, authorized periods of deferment and forbearance. This change applies to cases filed on or after November 5, 1990. However, please refer to Section IV of this Dear Colleague letter regarding an additional change to the Bankruptcy Code.

Current Department regulations direct the lender to file a claim with the guarantee agency if the borrower has filed a petition for relief under Chapter 13. See 34 CFR 682.402(d)(4)(iii)(A). This provision remains effective for Chapter 13 filings.

II. Changes Resulting From Pub. L. 101-517

A. Provisions Affecting the Pell Grant Program:

1. Special Conditions - §479A of the Act.

A financial aid administrator's authority under §479A of the Higher Education Act of 1965, as amended, to make individual adjustments based on adequate documentation, to a student's expected family contribution under the Pell Grant Program was rescinded for the 1991-92 award year. Instead, Pub. L. 101-517 provides that any student whose special circumstances meet special conditions prescribed by the Secretary shall have his or her Pell Grant Index (PGI) calculated

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using the expected year income for the 1991 calendar year instead of using base year income for the 1990 calendar year.

The Department will publish regulations defining applicable special conditions. The special conditions for the 1991-92 award year will be the same as those used in the 1990-91 award year. The application procedure will also be the same as the one for the 1990-91 award year (i.e., students will use the Student Aid Report (SAR) or the Correction Application for Federal Student Aid [AFSA] to apply).

2. Less-than-half-time Students.

For the 1991-92 award year less than half-time students will not be eligible for Pell Grants.

3. Maximum Award.

Based upon the appropriations for fiscal year 1991, the maximum award for the 1991-92 award year will be \$2,400.

B. Provisions Affecting the Guaranteed Student Loan Programs:

Pro Rata Refunds.

The Department's appropriations act for fiscal year 1990 (Pub. L. 101-166) specified that each institution participating in the GSL programs that had a default rate exceeding 30 percent must implement a *pro rata* refund policy for all Title IV aid recipients. This requirement has not been included in Pub. L. 101-517. Therefore, after the 1990-91 award year (i.e., the award year ending June 30, 1991), Title IV aid recipients at an institution with a default rate over 30 percent will no longer be subject to a mandatory *pro rata* refund policy if the Title IV aid does not include GSL. However, institutions with a default rate over 30 percent must maintain a *pro rata* refund policy for GSL recipients under 34 CFR 682.606(b).

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Pub. L. 101-542, and Pub. L. 101-647.

III. Changes Resulting From Pub. L. 101-542

A. General Provisions:

Consumer Disclosure Requirements.

Pub. L. 101-542 contains a number of provisions that affect the consumer disclosure regulations published in the *Federal Register* on June 5, 1989. Under the new law, the Secretary, in conjunction with representatives of institutions of higher education, is required to analyze the feasibility and desirability of making graduation rates and other similar statistical measures of institutional outcomes available to students and prospective students. The results of this analysis are to be reported to Congress by July 31, 1991. Institutions will be required to disclose to students and prospective students the completion or graduation rate of degree-seeking, full-time students beginning on July 1, 1993.

In the meantime, the law suspends the current regulations set forth in 34 CFR 668.44(c) - (f). Therefore, institutions currently participating in any of the Title IV student assistance programs that were required to collect and report completion and placement rates to prospective students under this provision are no longer required to do so. This does not prohibit institutions from providing this information to students.

Institutions are reminded that the suspension of 34 CFR 668.44(c) - (f) does not suspend the statutory requirement that institutions that make marketing claims regarding job placement to recruit students must disclose information supporting their claims to prospective students at or before the time of application. Specifically the institution must provide the most recent available data concerning employment statistics, graduation statistics and other information necessary to substantiate the truthfulness of the institution's claims. See 5487(a)(8) of the Act. However, institutions are not required to use the methods of calculation, formats, or forms that were required by 34 CFR 668.44(c) - (f).

Under the regulations, institutions have been required to submit to the Department each year by December 31 a sample Track Record Disclosure Form (TRDF) for each program covered by the requirements of 34 CFR 682.610(g). Effective immediately, institutions should not send TRDFs to the Department.

Changes Resulting From Pub. L. 101-508, Pub. L. 101-517,
Pub. L. 101-542, and Pub. L. 101-647.

IV. Changes Resulting From Pub. L. 101-647

A. Amendments to the Bankruptcy Law:

Section 3621 of Pub. L. 101-647 further modifies the Bankruptcy Code in two ways that affect Title IV student assistance obligations. First, the period during which a Title IV loan may not generally be discharged in bankruptcy has been extended from five years, as under current law, to seven years, calculated from the date the loan first came due to the date the bankruptcy action was filed, exclusive of periods during which repayment obligations are suspended, *e.g.*, authorized periods of deferment and forbearance. Second, in addition to Title IV student loans, obligations to repay an "overpayment" of, or any other obligation to repay, an "educational benefit" provided by a governmental unit or under a program funded by a governmental unit or non-profit institution are now also dischargeable during that same seven-year period only if the borrower proves that repayment would constitute an undue hardship.

These two changes to §523(a)(8) of the Bankruptcy Code take effect on May 28, 1991, which is 180 days after November 29, 1990, the date of enactment of Pub. L. 101-647.

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